Legislative Business

The Cochin Municipal Act (Amendment) Bill

Mr. K. Achyuta Menon *(Secretary to Government):* Sir, I rise to move that the Cochin Municipal Act (Amendment) Bill * be read in Council. A slight explanation may be necessary as to why I am repeating a motion which had been made by my predecessor in office in one of the earlier sessions of this Council.

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* On a point of order, Sir, is it not a continuation of the previous discussion on the Bill ?

Mr. K. Achyuta Menon *(Secretary to Government):* That is what I am trying to explain. The motion then moved by my predecessor had not been seconded and the title of the Bill had not been read. Even without these formalities being gone through, there was a good deal of discussion, and ultimately it ended by a statement by the then Secretary to Government that it will be reconsidered and brought forward at a later session. The essential formalities had not been gone through and that is why I moved that the Bill be read in Council again.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I second it.

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* Sir, I oppose the Bill. There was a discussion on the Bill before and I had occasion then to oppose the bill. The then Secretary to Government then made a statement that in the light of the discussion Government would reconsider the matter. That was the last reply and the matter was adjourned.

Mr. President: I think we may now consider this as a resumption of that discussion.

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* Sir, I am sorry to find that many of the hon'ble members have forgot the main point of discussion, so that I suggest it will be better if the hon'ble Secretary to Government will explain once again the scope and objects of the Amending Bill.

Mr. K. Achyuta Menon *(Secretary to Government):* Sir, I will just give a resume of the discussion. The Bill is a very short one, a small amendment to section 247 of the Act. The statement of objects

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* Appendix IV

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and reasons runs thus: "Under the Municipal Act there is no provision for the purpose of granting exemptions from the provisions relating to the taking out of licenses and the payment of fees even in cases where such exemptions may be expedient or necessary. It is necessary to take such power to enable the grant of exemptions in exceptional cases. Hence the Bill." The amendment to section 427 is this: "(2) Government, may by Notification in the Cochin Government Gazette, exempt any person or institution from the provisions of this Chapter relating to the taking out of licenses or payment of fees therefor."

This is the short amendment and the object of it is to invest the Government with power to grant exemptions in exceptional cases to persons or institutions from the operation of that section.

Mr. A. B. Salem *(Mattancheri):* I think the matter was dropped at the last session.

Mr. K. Achyuta Menon *(Secretary to Government):* No. We promised to reconsider the matter, that is all. The difficulty was felt in one concrete instance, *i.e.*, with regard to vessels belonging to the Harbour. The Municipal Council refused to grant exemption. The power that is now sought to be vested in Government is not an exceptional matter looking to the whole spirit of the Act. There are very many analogous powers possessed by Government under other sections of the Act, for instance, the power with respect to tolls. On principle and on analogy it is very difficult to find a line of distinction between the two. If, for instance, the Council imposes a toll and if Government has got the power to exempt persons from paying that toll, where is the harm in giving power to the Government in this matter also?

Mr. A. Eachara Menon *(Chittur-Rural):* Is it under the Municipal Act that you give exemptions from tolls?

Mr. K. Achyuta Menon *(Secretary to Government):* Under the Municipal Act also we have got power. Such powers have been exercised by Government ever since municipal institutions came into being here. There is absolutely no reason on principle, therefore, why Government should not have power to exempt persons or institutions from paying licensing fees or any other fees.

Mr. C. R. Iyyunni *(Trichur-South):* Do the Government require that they should have the power of exemption from all kinds of license fees, or do they require only power to grant exemption with regard to particular fees, such as landing dues?

Mr. President: Any particular license fees?

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Mr. C. R. Iyyunni *(Trichur-South):* Yes. There are ever so many dues mentioned in the section. Do the Government want to have the power of exempting particular institutions or persons from the payment of all such fees? Or only particular fees, such as, landing dues, tolls, etc? That is the point.

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* There are a large number of items under this section. If I remember correct, what happened then was this. The whole sense of this House was against granting such wholesale powers to Government. The Government landed itself in a very awkward corner and my hon'ble friend, Mr. T. K. Nayar, came to their rescue by moving a motion for postponement of the discussion to a later date.

Mr. M. K. Devassy *(Adur):* Last time the Government promised to reconsider a particular aspect of this Bill. May I know what was that particular aspect which was reconsidered and incorporated in this present bill?

Mr. K. Achyuta Menon *(Secretary to Government):* There was no particular aspect that was promised to be reconsidered. He only said that he will reconsider the matter and bring the Bill at another of the sittings of the Council. There is no particular aspect to this question. There is only one aspect and that is exemption under section 247. Some of the hon'ble members maintained that it would be giving large powers in the hands of the Government, the Government maintaining that it is only under very exceptional circumstances that they will grant this exemption. It is not a legitimate apprehension that Government would not look to municipal revenues or endanger the municipal revenues in any manner. We have already got a residual power like that in respect to tolls, and in spite of the retention of that power, no illegitimate enforcement of that rule resulting in loss to municipal revenues has been effected. That was pointed out here on the last occasion. The controversy was getting excited and the then Secretary to Government said that he will take some time and reintroduce the Bill at a later date. For my part, I can find no reason why anybody should oppose this very harmless amendment. By this amendment, Government takes up power to exempt persons or institutions from license fees. Government have already got power to exempt persons from tolls.

Mr. V. K. Krishnankutty *(Ezhuvas-Trichur):* If that is the argument, we will take that away also.

Mr. K. Achyuta Menon *(Secretary to Government):* That is one argument, that Government should have no power. Then

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that will be an invitation to them to make use of their residual powers under section 36. That is, hon'ble members are asking the Government to resort to its extraordinary powers and thus paralyse the municipal administration. You are asking the Government to use its extraordinary powers in a simple matter like this and abrogate the wishes of the Council. It is an unreasonable apprehension that if Government is invested with this power, it will be exercised to the detriment of the municipalities. But past experience shows that it will not be exercised in this manner. What about the tolls? For parity of reasoning you cannot find a better example. On principle and on logical reasoning, there seems to be no difference between the tolls and another toll on water, *i.e.*, landing dues. Even now there are very many ways of circumventing the powers of the municipality if one is so minded. Refusal to vest porambokes under the municipalities will prevent them from imposing landing dues. Government can take away a portion of the porambokes vested in them and ask the Government boats or any other vessels to touch at those places.

Mr. A. Eachara Menon *(Chittur-Rural):* They will think twice before taking that extraordinary step.

Mr. K. Achyuta Menon *(Secretary to Government):* I submit, therefore, that the object of this amendment is a simple matter. Government would resort to it only in certain exceptional cases. It is only tantamount to advising the municipality legitimately to exempt certain persons from liability to pay landing fees. It will certainly not be exercised in all cases and in undeserving cases or illegitimate cases. There may be cases where a municipality may, for reasons which may be difficult for the Government to understand, refuse to exempt persons even after representations have been made by Government. A case like that did happen. Therefore, we want to incorporate this power in the Statute itself. Such provisions exist in various other Statutes of a similar nature, for instance, in the Agricultural Debt Relief Act, Government have reserved the power to exempt institutions. Another example is the Income-tax Act. In several other instances also Government have reserved the power to exempt certain individuals and institutions from the operation of Statutes.

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* Has the municipality itself power to exempt persons or institutions from paying license fees? The difficulty arose in this way. Government asked the municipality to exempt certain people from payment of the landing dues. The municipality had no power to do so, and they did not grant the request of the Government. We are now finding

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fault with the municipality for not doing a thing for which they had no power. This is only simply a question of prestige, for exempting particular people, or rich people, who can legitimately pay for the services they are enjoying.

Mr. A. B. Salem *(Mattancheri)*: May I know, Sir, whether a provision like this exists in the District Municipalities Act?

Mr. K. Achyuta Menon *(Secretary to Government)*: No. There may not have been occasions for them to make this rule. But we are here only upon the merits of a particular amendment. It is beside the question whether some difficulty has not been experienced by the District Municipalities before.

Mr. C. R. Iyyunni *(Trichur-South)*: There is a constitutional difficulty here. The municipality can do a certain thing which the Government can revise, amend or cancel. But this is a case where the municipality itself cannot do anything, but the Government want to exercise that power over the municipality.

Mr. K. Achyuta Menon *(Secretary to Government)*: The Hon'ble Law Member advises me that the matter is not beyond doubt, as to whether the municipality which imposes the tax cannot exempt persons from the payment of that tax. The relevant word in that section is "may."

Mr. E. Ikkanda Warriar *(Cheruthuruthi)*: There is a difference between tax and license fee. The municipality may have powers to give a reduction or exemption in the case of tax, but not in the case of license fee.

Mr. K. Achyuta Menon *(Secretary to Government)*: That argument is insufficient for opposing an amendment, when the matter is not beyond controversy. The object of the amendment is what I have stated already. There need be no sort of apprehensions that it will be exercised against the interests of the municipality or its revenues. Government already possess very large powers under section 36 and other sections of the Act. They have already analogous powers like that of the tolls. This is a simple power to make exemptions which is the least that the Government have asked.

മിസ്റ്റർ ടി. കെ. നായർ : കഴിഞ്ഞ തവണത്തെ വാദവിഷയം ഇതല്ലായിരുന്നു. ലാൻറിങ്ങ് ഫീസും ലൈസൻസ് ഫീസും രണ്ടും രണ്ടുകായ്ങ്ങളാണ്. അതിനെപ്പറ്റി പറഞ്ഞ അവസരത്തിൽ ലൈസൻസുഫീസിൻെറ കായ്ത്തിലും എക്സംപ്റ്റ് ചെയ്യുവാനുള്ള അധികാരം ഗവർമ്മേണ്ടിനു വേണമെന്നാണ് പറഞ്ഞതു്. ലാൻറിങ്ങ് ഫീസ് എക്സംപ്റ്റ് ചെയ്യുവാനുള്ള അധികാരംമാത്രം പോരെ എന്നു് ഞാൻ ചോദിച്ചപ്പോൾ അതിനെപ്പറ്റി റീകൺസിഡർ ചെയ്യുന്നതാണെന്നു് അന്നു മറുപടി പറയുകയും ചെയ്തിട്ടുണ്ടു്.

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Mr. President: There is no question of prestige underlying the object of this amendment. A specific case arose in which Government thought that the Harbour Authorities should be exempted from a certain fee, and the municipality refused to agree with Government. I do not know whether the refusal of the Municipality was due to the fact that they pleaded want of power under the Statute. But then what I thought was this. As the Hon'ble Secretary to Government pointed out, there are very general powers of interference vested in Government, and also a very omnibus section in the Municipal Act allowing Government to take any action they deem fit. The policy of the present Government has been not to use this section at all. As a matter of fact, a number of appeals have come before Government against the decisions of Municipalities, and in fact, whenever these appeals were presented to me in person, I used to ask under what section they were asking me to interfere. They used to point out to me this omnibus section and in all these cases, I have refused to interfere, because I want to uphold the autonomous position of the Municipalities. When a particular case comes before Government for interference, I want that interference to arise out of a particular section rather than out of that omnibus section. It is in the interests of the autonomous character of the Municipalities that we have brought forward this Bill. This amendment is not to enlarge the powers of Government but in fact to restrict the power of Government. If the House does not take that view, Government will be forced to use the extraordinary provisions contained in the Act. It is for the House to decide which course Government should choose to adopt. Let me be perfectly frank. Many instances arise in which certain Municipalities do not see eye to eye with Government, and you must take the realities of the situation. Here Municipalities and the public also very often look to Government for redress in matters which lie exclusively within the jurisdiction of Municipalities. Such being the realities of the situation, Government must discharge their responsibilities. The only point is whether Government should discharge their responsibilities by virtue of one restricted section or by virtue of an omnibus section. The House can choose its own course. This is the real implication of the amendment. It is not really to enlarge the powers of Government.

മിസ്റ്റർ ടി. കെ. നായർ : ലൈസൻസ് ഫീസ് ഒഴിവാക്കുവാനുള്ള അധികാരം ഗവൺമെണ്ടിനുവേണമെന്നും പറയുന്നതിന്റെ അർത്ഥമെന്തെന്നു മനസ്സിലാകുന്നില്ല. ഗവൺമെണ്ടിനു എന്തെങ്കിലും ബുദ്ധിമുട്ടുവന്നാൽ അതില്ലാതാക്കുവാനായിട്ട് ഇങ്ങിനെ ഒരു നിയമം ലാൻറിങ്ങ് ഫീസിനെ സംബന്ധിച്ച് വേണമെന്നു ഞാൻ മനസ്സിലാക്കീട്ടുണ്ട്. പൊറിക്കിളിന്നു ലൈസൻസ് ഫീസ്

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എക്സംപ്റ്റ് ചെയ്യുവാനുള്ള അധികാരം വേണമെന്ന പറയുന്നതിന്റെ ആവശ്യം മനസ്സിലാകാത്തതുകൊണ്ടാണ് ചോദിക്കുന്നത്.

Mr. President: Suppose some case like that arises. Government cannot go about tampering with a Statute like the Municipal Act by amendments every now and then. So, when a necessity arises for one amendment, they look into the question, and make the amendment as comprehensive as possible, so that there may not have the need to come to the House again and again.

Mr. K. Achyuta Menon *(Secretary to Government):* Another point, Sir, vehicles will not come under landing fees.

Mr. President: Just as we have thought it necessary to exempt the Harbour boat from landing fees, a case, for instance, might arise—may be a hypothetical one—in which for defence purposes certain motor cars might have to be maintained within the Ernakulam Municipal limits. The Ernakulam Municipality may say, "You must take licences", and Government might probably think that in the peculiar circumstances of the case, these motor cars might be exempted from motor license fees. Are we to bring another amendment then?

Mr. E. Ikkanda Warriar *(Cheruthurthi):* In such cases, the omnibus section can be made use of.

Mr. President: If it is the deliberate opinion of this House that in all these cases, Government can use the omnibus section.....

മിസ്റ്റർ സി. ആർ. ഇയ്യുണ്ണി: ഈ ഭേദഗതികൊണ്ടു് ലൈസൻസ്സ് വേണ്ട എല്ലാസംഗതികളിലും ലൈസൻസ്സ് ഫീ ഒഴിവാക്കാനുള്ള അധികാരം സർക്കാരിനു നൽകുന്നു. ഹോട്ടലുകൾ, തിയേറ്ററുകൾ, പലതരത്തിലുള്ള നിർമ്മാണശാലകൾ, പൊതുജനാരോഗ്യഹാനികരമായ പലതരത്തിലുള്ള വ്യവസായങ്ങൾ, എന്നിവയൊക്കെ ഇതിന്റെ പരിധിയിൽ പെടുന്നതാണു്. ഇവ എല്ലാറ്റിനും ഫീസ് ഒഴിവുചെയ്യാനുള്ള അധികാരം കൊടുക്കുന്നതു് ആക്ഷേപാർഹമാണു്. സർക്കാരിനു് ഇപ്പോൾവിഷമം നേരിട്ടിട്ടുള്ളതു് ലാൻഡിങ്ങ് ഫീസിന്റെ കാര്യത്തിലാണു്. ആകാര്യത്തിനുവേണ്ടി സർക്കാരിലേക്കു് ലാൻഡിഗ് ഫീസ്സ് ഒഴിവാക്കാനുള്ള അധികാരം നൽകുക.

നേരെ മറിച്ചു് ലൈസൻസ്സ് എടുക്കേണ്ട എല്ലാക്കാര്യങ്ങളിലും ലൈസൻസ്സ് ഫീ വേണ്ടെന്നുവെക്കാനുള്ള അധികാരം നൽകിയാൽ ചിലപ്പോൾ അതു ദുരുപയോഗപ്പെടുത്തി എന്നു വരാവുന്നതാണു്. നിങ്ങൾ ഇവിടെ ദിവാനായി ഇരിക്കുന്ന കാലത്തോളം അങ്ങിനെ ചെയ്യുകയില്ലായിരിക്കാം. നിങ്ങളുടെ സ്ഥാനത്തു് വേറെ ഒരാൾ വരുമ്പോൾ അദ്ദേഹം അതു് ദുർവിനിയോഗിക്കയില്ല എന്നതിനു ഞങ്ങൾക്കുറപ്പില്ല. അപ്രകാരം ചെയ്യാൽ സ്വയംഭരണശക്തി ഉണ്ടെന്നു അഭിമാനിക്കുന്ന മുനിസിപ്പാലിറ്റിക്കു് യാതൊരു അധികാരവും ഉണ്ടായിരിക്കയില്ല. അതുകൊണ്ടാണു് ഈ കാര്യത്തിൽ ഞങ്ങൾ എതിർക്കുന്നതു്.

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Mr. President: Government will abide by the decision of this Council with regard to this Bill. I think you have fully understood this point. If the House do not want to have this Bill, then I will take it that it is the intention of the House that the Government should more liberally exercise powers under the omnibus section.

Mr. V. K. Bhaskara Menon *(Cranganur):* That does not follow. Government should exercise this power only in cases where they make a proper use of it.

Motion put and lost, 15 voting for and 27 against

Panel of Chairmen

Mr. President: I have to announce to the House that I have nominated Messrs. P. Govinda Menon and T. P. Poulose to the Panel of Chairmen for this session.

The House rose for lunch at 1-5 p.m. and re-assembled at 2-30 p.m. with Mr. P. Govinda Menon, Panel Chairman in the chair.

The Cochin Registration Act (Amendment) Bill

Mr. K. Achyuta Menon *(Secretary to Government):* Mr. President Sir, I rise to move that the Cochin Registration Act (Amendment) Bill * be read in Council.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

Secretary to the Council: The title of the Bill is the Cochin Registration Act Amendment Bill.

Mr. K. Achyuta Menon *(Secretary to Government):* I request that the President may be pleased to suspend S. O. 32.

Panel Chairman: S. O. 32 is suspended.

Mr. K. Achyuta Menon *(Secretary to Government):* I move that the Bill may be taken into consideration.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

Clause 2 put and carried

Clause 1 put and carried

Title and preamble put and carried

* Appendix V.

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